

CASE 09-13
Norman Freeman
10 Dudley Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
May 18, 2009

The Board consisted of:
Stephen A. Garanin; Nancy G. Rubenstein, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft and Benjamin D. Stevenson.

Notice was published in the *Sudbury Town Crier* on April 30 and May 7, 2009, posted, mailed and read at this hearing.

Mr. Garanin, acting as Chair, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Lisa Freeman was present, representing Norman Freeman, applicant, in a petition for renewal of Special Permit 07-35 to operate a hair salon at 10 Dudley Road. The business has been in operation since 2006 and the Freemans do not plan to make any changes to the business. When asked by Mr. Gossels how business has been Ms. Freeman said it appears to be going well and there have been no problems. When asked by Mr. Klofft if there were any concerns regarding the conditions, Ms. Freeman said she had no concerns.

There were no further questions. No abutters were present. The hearing was then closed.

The following motion was placed and seconded:

MOTION: To grant Norman Freeman, owner of property, renewal of Special Permit 07-35, granted under the provisions of Section 2340 of the Zoning Bylaws, to conduct a Home Business, specifically a hairdressing studio, property located at 10 Dudley Road, Residential Zone A-1, subject to the following:

1. Hours of operation will be Monday-Friday, 8 a.m.-6 p.m., with two days allowed for extended hours to 9 p.m., Saturday, 10 a.m.-5 p.m., and occasional hours only on Sunday.
2. All parking will be located in the driveway on the property. No on-street parking will be allowed.
3. No more than two client vehicles will be parked on the premises at any one time.

4. No more than one employee, other than the residents of the premises, will be allowed.
5. Any sign identifying the operation must comply with Section 3200 of the Sign Bylaw.
6. No more than forty (40) clients per week, associated with this business will be allowed.
7. All waste materials from this business will drain into a tight tank which is separate from the home septic system. The tank will be emptied when full and in any event at least every two years.
8. This permit is non-transferable and will expire in five (5) years on May 18, 2014, and the Board will consider renewal upon receipt of proper application on or before that date.”

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner seeks a special permit for renewal of a hairdressing studio on the premises. The business has been in operation for approximately since 2006 and there have been no complaints from the neighbors. Renewal is being sought under the same conditions as the original permit.

The Board finds that the proposed operation satisfies the requirement for a Special Permit Home Business. It is in an appropriate location and does not exhibit any exterior indication its presence. Adequate and appropriate facilities have been provided for proper operation. Specifically, there is adequate off-street parking and a tight tank, separate from the primary septic system, will be used for storage of waste materials prior to disposal in accordance with applicable regulations.

No abutters were present to oppose renewal. Therefore, the Board finds a five-year renewable period to be appropriate for this case.

Stephen A. Garanin

Jeffrey P. Klofft

Nancy G. Rubenstein, Clerk

Benjamin D. Stevenson

Jonathan G. Gossels

CASE 09-15
Kathleen Wyman
72 Austin Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
May 18, 2009

The Board consisted of:
Stephen A. Garanin; Nancy G. Rubenstein, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft and Benjamin D. Stevenson.

Notice was published in the *Sudbury Town Crier* on April 30 and May 7, 2009, posted, mailed and read at this hearing.

Mr. Garanin, acting as Chair, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Kathleen Wyman, the applicant, and her daughter were present to represent a petition for a special permit under the provisions of Section 5500 of the Zoning Bylaws, to allow an accessory dwelling unit to be built as an addition to an existing single-family residence, property located at 72 Austin Road.

Ms. Wyman explained that she intended to build an apartment addition onto the main house which she would then occupy while her family members reside in the original section of the house.

Discussion ensued about the size of the addition in relation to the size of the house, and whether the addition's size conformed to the calculation of "no more than 30% of the floor area of the single-family home" as mandated in the newly revised accessory apartment bylaw adopted at the April 6, 2009 Town Meeting. Discussion continued about interpretation of the bylaw and bylaw's true intent in regard to size and allowed occupancy. In the end it was decided that the size does conform to the bylaw.

In regard to the entrance of the accessory unit, the Board agreed that the placement of the door at the front of the house rather than the side made sense because it was located at the garage which made its appearance similar to other houses in the neighborhood.

The Board made a point of informing Ms. Wyman that while the ZBA can issue a special permit she cannot act upon it until the Attorney General reviews and approves the new accessory apartment bylaw. Jim Kelly, Building Inspector for the Town of Sudbury, explained that the ZBA was essentially approving the use of the building through the special permit. Ms. Wyman

can proceed with her building plans in order to secure her builder and adhere to the building schedule, however until the Attorney General approves the bylaw the building's use may or may not be approved.

William Nicholson, an abutting neighbor at 66 Austin Road, spoke in favor of the addition, however he voiced concern about the water level in the neighborhood at certain times of the year and questioned whether the septic system would be adequate for the expanded building. Ms. Wyman explained that the Board of Health had approved a new septic plan which includes a separate septic system for the apartment unit and allows for more drainage on the driveway side of the house. Mr. Klofft explained that septic systems are under the jurisdiction of the Board of Health and not the Zoning Board.

Discussion proceeded about possibly amending the accessory apartment bylaw at next year's town meeting to further clarify language about doorway placement to ensure that homes with accessory apartments still maintain the appearance of one single-family residence, and about the unit size calculations.

There were no further comments from the Board or audience. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Kathleen M. Wyman, applicant and owner of property, a Special Permit under the provisions of Section 5500 of the Zoning Bylaws pending the Attorney General's approval of the new bylaw, to allow a Single Accessory Dwelling Unit, property located at 72 Austin Road, Residential Zone A-1.

VOTED: In favor: 5 Opposed: 0

REASONS: The petitioner requires a Special Permit to allow a single-family accessory dwelling unit. The Board finds that the petitioner has fulfilled the requirements of the Bylaw for the granting of a Special Permit.

Stephen A. Garanin

Jeffrey P. Klofft

Nancy G. Rubenstein, Clerk

Benjamin D. Stevenson

Jonathan G. Gossels

CASE 09-16
Ted and Naomi Mayer
184 Pride's Crossing Road

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
May 18, 2009

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Stephen A. Garanin; Nancy G. Rubenstein, Clerk; Jonathan G. Gossels; Jeffrey P. Klofft and Benjamin D. Stevenson.

Notice was published in the *Sudbury Town Crier* on April 30 and May 7, 2009, posted, mailed and read at this hearing.

Mr. Garanin, acting as Chair, explained the requirements necessary to substantiate the granting of a variance. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Attorney Seamus O'Kelly, and the applicants, Ted and Naomi Mayer, were present to represent a petition for a variance that would create a nonconforming lot by reducing the size of the parcel, a part of which includes land situated in the city of Marlborough. The Mayers' property is located at 184 Pride's Crossing Road. It is their desire to reduce the lot by disconnecting the Marlborough portion of land.

Mr. O'Kelly began his presentation with a history of the property title and evolution of the lot. The lot was given its current configuration in 1981 when the original five acre parcel of land in Sudbury was divided into three lots with rectangular strips of land connecting the Sudbury lots to land located in Marlborough. Each lot had the minimum 60,000 square feet of land in Sudbury, conforming to the Sudbury zoning bylaw at that time. The balance of land in Marlborough made each lot no less than five acres to conform to the private deed restriction on the land. At the 1988 Town Meeting, Sudbury voted to adopt the Wayside Inn Historic Preservation Zoning District which requires five acre lots. The Mayers acquired the land in 1998. The Mayers argued that they are currently unable to use the Marlborough lot because it is inaccessible by foot from the Sudbury portion of their property so they have no desire to keep it any longer and pay property taxes to the city of Marlborough.

There was some discussion about whether or not the land in Marlborough, which has frontage on Hanlon Drive, is a buildable lot. Hanlon Drive is a settled neighborhood. Mr. Stevenson reminded the Board that the Sudbury Zoning Board of Appeals does not have jurisdiction over Marlborough property. However Mr. Gossels pointed out that decisions the Sudbury Zoning Board makes does have an impact on the density of abutters if lots over the town lines are built upon.

Mr. Klofft said that he was having trouble with taking a conforming lot and making it nonconforming because it might set a precedence.

Mr. O'Kelly argued that Section 6134 of the Zoning Bylaw says that the granting of a variance "must not nullify or substantially derogate from the intent or purpose of the ordinance or bylaw," and said that the character of the land would not change. Mr. Klofft disagreed.

Mr. Klofft said that in looking at the criteria for approving a variance, some criteria have been satisfied, but he did not see the hardship factor. Mr. O'Kelly stated that the Mayers are paying property taxes in Marlborough for land that they cannot use or easily access and that causes a hardship for them. In response, Mr. Gossels said that the Mayers chose to purchase the land knowing the configuration and conditions when they bought it in 1998 and so he did not see the hardship. On her behalf Ms. Mayer said that she didn't want to jeopardize the property and she defended the choice to purchase the property and house having relocated to Sudbury from Vermont. Now that she and her husband are 11-year Sudbury residents they understand the town more and what is available to property owners. She said that she didn't feel that Hanlon Drive had any relationship with their neighborhood and felt that there was a buffer of a large swath of land between the two sections of the parcel. Mr. O'Kelly said that in 1981 the lots in Sudbury would have been grandfathered in at their smaller size.

Linda Soucek, of 2 Red Oak Drive, explaining that her family had lived in Sudbury since the 1930s and that she grew up in Sudbury on a property of 100 acres and now lives on a 5 acre lot, voiced her concerns about whether or not a precedence would be set if the Zoning Board began granting reductions of lot sizes and property values could be devalued.

Chris Trainor, of 41 Hanlon Drive, Marlborough, was in attendance simply to understand what was being proposed.

Attendees were then given an opportunity to view the property map.

In a final effort to present his case Mr. O'Kelly said that in 1981 the original five-acre lot was divided into three. If the Marlborough portions of the properties were not added then the Sudbury parcels would have been grandfathered in under the provisions of the zoning laws. Therefore cutting off the Marlborough parcels today would not impact the neighborhood.

Mr. O'Kelly then asked for a sense of the Board's opinion at that point. Mr. Gossels said that he didn't feel the petition meets the hardship criteria. Mr. Klofft agreed along with the derogation issue. Ms. Rubenstein said that she agreed with Mr. Gossels and Mr. Klofft. Mr. Stevenson said that he felt that he wouldn't support approval of the variance for two reasons: 1) that the Board is being asked to judge the quality of the lot, not just the acreage issue, and 2) while he is sympathetic to the applicants' position regarding hardship he noted that someone created the

unconventional shape of the lot for a reason. Mr. Garanin said that he also didn't see the hardship.

On behalf of his clients, Attorney O'Kelly requested the application for the variance be withdrawn without prejudice.

A motion was made, seconded and unanimously voted to accept the applicant's request to withdraw without prejudice

Before adjourning, Sudbury realtor Mimi DiMauro, a resident of 588 Peakham Road, stated that in her opinion if the lot reduction were granted she feels others would try to subdivide their properties, and agreeing to the lot size reduction would set a precedence. She said that people, particularly those living along town boundaries, need to accept the nature of the zoning laws and cannot expect to subdivide and benefit financially no matter what the hardship, and she feels allowing the lot reduction would definitely affect the neighbors.

There were no further comments from the Board or audience. The hearing was closed.

The following motion was placed and seconded:

MOTION: "Per the request of the applicant the Board moved to withdraw without prejudice the application for a variance."

VOTED: In favor: 5 Opposed: 0

REASONS: Relying on the information submitted, it is the determination of this Board that the lot as configured does not represent a hardship for the applicants and therefore the criteria for approval of a variance have not been met.

Stephen A. Garanin

Jeffrey P. Klofft

Nancy G. Rubenstein, Clerk

Benjamin D. Stevenson

Jonathan G. Gossels